REMARKS

Claims 1, 6, 9-14, 19, 22-28, 35 and 40-44 have been amended. Claims 1-44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Claim Objection:

The Examiner objected to claims 28, 40, and 42 under 37 CFR 1.75(c), as being "of improper dependent form for failing to further limit the subject matter of a previous claim". Applicant respectfully asserts that the claim format is proper. According to M.P.E.P. 608.01(n)(III), a dependent claim may be in a different statutory class than the independent claim from which it depends. *See* M.P.E.P. 608.01(n)(III), which states, "The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper." Accordingly, Applicant respectfully requests withdrawal of this objection.

Section 103(a) Rejection:

The Examiner rejected claims 1-44 under 35 U.S.C. § 103(a) as being unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter "Lustig") in view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter "Seymour"). Applicant respectfully traverses this rejection for at least the following reasons.

In regard to claim 1, the cited art fails to teach or suggest *default standards for a purchaser, wherein said* ***default standards specify product or service characteristics*** *that are preferred by said purchaser.* Lustig is directed to a system for facilitating a transaction that includes providing a better offer, when a better offer is available, to a user that desires to accept an original offer unless a better offer is available. Lustig describes an indicator which allows a user to commit to a better offer: "by selecting the indicator, the User commits to accepting a better offer when the better offer is available."

(Lustig, paragraph [0073]). Lustig does not teach or suggest any type of default standards that specify a purchaser's preferred product or service characteristics. Lustig's user is able to indicate a commitment to a better offer, but the user is not able to indicate any other preferences regarding an offer or the products related to an offer. Accordingly, Lustig does not teach or suggest default standards for a purchaser, wherein said **default standards specify product or service characteristics** that are preferred by said purchaser. Applicant asserts that none of the other cited references teach this aspect of Applicant's claim, whether considered alone or in combination with Lustig.

Further in regard to claim 1, the cited art fails to teach or suggest *comparing terms of sale for sale offers located from said searching to said initial terms of sale* ***and*** *said* ***default standards*** *and based on said comparing, presenting one of the sale offers ... wherein the presented sale offer includes said improved terms of sale* *and* ***meets said default standards***. Lustig's system compares a user's original offer to other available offers to determine whether a better offer exists. Specifically, Lustig describes, "the matching program 260 performs the matching process, in which the matching program 260 accesses the available offer information in the matching database 270, compares the available offer information with the original offer information to determine whether the better offer is available." (Lustig, paragraph [0078]). Thus, Lustig compares only information related to original and available offers and does not make any further comparison based on default standards which specify product or service characteristics preferred by a purchaser. Furthermore, as described above, Lusting does not teach or suggest default standards which specify product or service characteristics preferred by a purchaser. Accordingly, Lustig **cannot** compare terms of sale for sale offers to initial terms of sale and **default standards** and Lustig cannot present a sale offer that meets **default standards**. Applicant asserts that none of the other cited references teach this aspect of Applicant's claim, whether considered alone or in combination with Lustig.

For at least the reasons above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested.

Independent claim 14 recites limitations similar to those discussed above regarding claim 1, and was rejected using similar reasoning. Therefore, the arguments presented above apply similarly to this claim.

In regard to claim 29, the cited art fails to teach or suggest *if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price.* Lustig, in paragraph [0082] describes "matching program 260" of Lustig's system comparing "First Offer information" (i.e., original offer information) to "Second Offer information" and "Third Offer information," determining "that the better offer is available as the Second Offer (i.e., the Second Price is lower than the Third Price and the First Price)," and accepting "the Second offer on behalf of the user." However, claim 29 requires **purchasing** an item for the purchaser **at the better price** and **charging** the purchaser **a new price** between the particular price and the better price. In Lustig's offer comparison description in paragraph [0082], Lustig describes accepting a second offer on behalf of the user. Lustig does **not** teach or suggest **purchasing** an item on behalf of the user at the **second offer price** and **charging** the user a **new price** between the original offer price and the second offer price. More specifically, Lustig clearly does not describe purchasing an item on behalf of a user at a price and charging the user a **different** price. Lustig merely accepts an offer for an item on behalf of a user, which does not teach or suggest actually purchasing the item, much less purchasing the item for one price and charging the user a **different** price.

The Examiner, in the Response to Arguments section of the Final Office Action dated September 28, 2009, asserts, "If the system [of Lustig] accepts the Offer 2 as the better offer, the user will be charged the price between the price of the Offer 1 and the Offer 3 (better price)." However, Lustig, as described above, merely describes accepting an offer on behalf of a user. Lustig does not describe executing purchases on behalf of a user or charging a user any amount. The Examiner's assertions are not supported by the actual teachings of the reference. Further in regard to the Examiner's above-mentioned

comments, the Examiner appears to have misinterpreted Applicant's claim. Applicant's claim 29 recites, "purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price." Nowhere does Lustig teach or suggest **purchasing** an item for a user at **one price** and **charging** the user a **new price** which is **different** from the purchased price. The Examiner's above-mentioned example of accepting offer 2 only illustrates that the price for offer 2 is between the price of offer 1 and the price of offer 3. The price of offer 2 falling between offer 1 and offer 3 has nothing to do with purchasing an item for a user at one price and charging the user a **different** price. More specifically, accepting offer 2 in Lustig's system does not teach or suggest purchasing an item for a user at one price and charging the user a **different** price, just because the price of offer 2 is between the price of offer 1 and offer 3. Accordingly, Lustig does not teach or suggest if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price. Applicant asserts that none of the other cited references teach this aspect of Applicant's claim, whether considered alone or in combination with Lustig.

For at least the reasons above, the rejection of claim 29 is unsupported by the cited art and removal thereof is respectfully requested.

Independent claims 41 and 44 recite limitations similar to those discussed above regarding claim 29, and were rejected using similar reasoning. Therefore, the arguments presented above apply similarly to this claim.

Further in regard to claim 41, the cited art does not teach or suggest *intercepting a message over the internet* ***to delay said purchase*** *for a predetermined amount of time, wherein the message includes information regarding the purchaser's commitment to purchase the item or service.* The Examiner, in the Final Action dated September 28, 2009, asserts that "intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art. Therefore, it would have been obvious

... to modify Lustig's [system] in combining with Seymour ... for the purpose of providing more efficiency and convenient in communication over the Internet." The Examiner's assertion that "intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art" is a completely unfounded assertion and is merely the Examiner's opinion.

The Examiner hasn't cited any prior art that supports the Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment to purchase information. M.P.E.P. 2144.03A clearly states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." That is precisely the case here. The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commit to purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of Applicant's claim is based. Since no evidence of record supports this assertion, a *prima facie* rejection has not been established.

Additionally, the Examiner's rejection does not take into account the full and complete language of Applicant's claim. The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet *to delay the purchase for a predetermined amount of time*. Lustig and Seymour, as admitted by the Examiner do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.EP. §2143.03 clearly states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness.

For at least the reasons above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

Further in regard to claim 44, the cited art fails to teach or suggest a plurality of broker-agent programs ***performing multiple searches in parallel*** *for the better price.* In the Response to Arguments section of the Final Action dated September 28, 2009, the Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price", referring to Lustig's matching programming organizing, storing and retrieving a plurality of offers from a matching database. Applicant strongly disagrees. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner even states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers *from a matching database*" (emphasis added). Thus, **as admitted by the Examiner**, Lustig teaches retrieving other offers from a database, not a plurality of broker-agent programs performing multiple searches in parallel. Offers may be obtained in order to fill a database in numerous ways. The Examiner's contention that retrieving a plurality of offers from a database is "equivalent to" performing multiple searches in parallel is simply incorrect and is clearly unsupported by the cited art.

For at least the reasons above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

Applicants also assert that numerous other ones of the dependent claims recite further distinctions over the cited art. Applicants respectfully traverse the rejection of these claims for at least the reasons given above in regard to the claims from which they depend. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time. Applicants reserve the right to present additional arguments.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00301/RCK.

Respectfully submitted,

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Date: December 28, 2009